

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
BOK ENTERPRISES)
d.b.a. COLLEGE INN PUB,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 810

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER, the appeal of a \$50 civil penalty for an alleged smoke emission violation of respondent's Regulation I, having come on regularly for formal hearing before Board members Chris Smith and Walt Woodward on the 18th day of August, 1975, at Seattle, Washington and appellant BOK Enterprises appearing through Pamela Rossano and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin, and the Board having considered the sworn testimony, the exhibits, argument of counsel, records and files herein and having entered on the 2nd day of October, 1975, its proposed Findings of Fact,

1 Conclusions of Law and Order, and the Board having served said proposed
2 Findings, Conclusions and Order upon all parties herein by certified
3 mail, return receipt requested and twenty days having elapsed from
4 said service; and

5 The Board having received exceptions to said proposed Findings,
6 Conclusions and Order from appellant and having considered and denied
7 same; now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order dated the 2nd day of
10 October, 1975, and incorporated by this reference herein and attached
11 hereto as Exhibit A, are adopted and hereby entered as the Board's
12 Final Findings of Fact, Conclusions of Law and Order herein.

13 DATED this 7th day of November, 1975.

14 POLLUTION CONTROL HEARINGS BOARD

15 Chris Smith
16 CHRIS SMITH, Chairman

17 Walt Woodward
18 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,
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FINDINGS OF FACT,
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This matter, the appeal of a \$50 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) in a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on August 18, 1975.

Appellant appeared through Pamela Rossano, respondent through Keith D. McGoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

EXHIBIT A

Witnesses were sworn and testified. Exhibits were admitted.

Appellant's counsel made a closing argument.

From testimony heard, exhibits examined and argument considered, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d Ex. Sess. (RCW 43.21B.260), has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

Section 9.03(b)(1) of Regulation I makes it unlawful to cause or allow the emission of an air contaminant greater in opacity than 20 percent for more than three consecutive minutes in a one-hour period from a source installed subsequent to April 1, 1973. Section 3.29 authorizes a civil penalty of not more than \$250 for each violation of Regulation I.

II.

Appellant operates a tavern in the basement of a building of historic significance being restored at 4000 University Way, N.E., Seattle, King County. In keeping with the tavern's Old English theme and decor, a small wood burning fireplace was installed subsequent to April 1, 1973. The smoke from this fireplace is vented through a 48-foot brick chimney. Appellant, aware that the stack may emit smoke in violation of respondent's standards particularly when the fire first is ignited in the late forenoon from October to April, is making a good faith effort to solve the problem.

III.

On January 10, 1975, shortly after 11:00 a.m., there was emitted f.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 appellant's fireplace stack blue smoke of 40 percent opacity for six
2 consecutive minutes.

3 This emission was noted by an inspector on respondent's staff. He
4 served Notice of Violation No. 10357, citing Section 9.03 of Regulation I,
5 on appellant. Subsequently, and in connection therewith, Notice of Civil
6 Penalty No. 1887 (amended) in the sum of \$50 was served on appellant and
7 is the subject of this appeal.

8 IV.

9 Any Conclusion of Law hereinafter recited which is deemed to be a
10 Finding of Fact is adopted herewith as same.

11 From these facts, the Pollution Control Hearings Board comes to these

12 CONCLUSIONS OF LAW

13 I.

14 Appellant was in violation of Section 9.03(b) (1) of respondent's
15 Regulation I as noted in Notice of Violation No. 10357.

16 II.

17 Notice of Civil Penalty No. 1887 (amended), calling for a sum
18 which is one-fifth of the maximum allowable amount, is reasonable.

19 III.

20 Appellant, making a good faith effort to be in compliance with
21 respondent's regulations, is entitled to further leniency.

22 IV.

23 Any Conclusion of Law herein stated which is deemed to be a Finding
24 of Fact is adopted herewith as same.

25 Therefore, the Pollution Control Hearings Board issues this

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27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

ORDER

The appeal is denied; the civil penalty of \$50 is sustained but payment thereof suspended provided that appellant submit to respondent, within six months from the date that this Order becomes final, a plan which reasonably complies with respondent's applicable regulations.

DONE at Lacey, Washington this 2nd day of October, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

Walt Woodward
WALT WOODWARD, Member